

# Legal, Legislative, & Regulatory Update 128<sup>th</sup> Maine Legislature

Fall 2017

# The Policymakers

- 186 Legislators; 128<sup>th</sup> Maine Legislature
  - 18 R, 17 D in Senate
  - 75 D, 71 R, 5 I or U in House
- 151 members of the House of Representatives, each representing 8797 citizens
- 35 Senators, each representing 36,426 citizens
- All elected every 2 years for maximum of 4 consecutive terms
- Governor: elected every 4 years for maximum of 2 terms
- Impact of term limit & MCEA public campaign financing laws

## Physicians in the 128<sup>th</sup> Maine Legislature

- Senator Geoffrey Gratwick, M.D. (D – Senate District 9, Bangor & Hermon)
- Representative Heidi Brooks, M.D. (D – House District 61, part of Lewiston)
- Representative Patricia Hymanson, M.D. (D – House District 4, Ogunquit & parts of Wells, York, & Sanford)

# Tracking Maine Legislation

- Maine legislature's web site: <http://legislature.maine.gov/>
  - Bill status: L.D. #
  - Session laws: P.L. or Resolves Chapter
  - Statutes: 24 M.R.S.A. sec. 2851
- State agency rules online:  
<http://www.maine.gov/sos/cec/rules/rules.html>
- Find your legislator:  
<http://legislature.maine.gov/house/townlist.htm>

# Highlights from the First Regular Session of the 128<sup>th</sup> Maine Legislature

General Effective Date for first session bills:  
Wednesday, November 1, 2017

# State Budget

- L.D. 390, An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019 (P.L. 2017, Ch. 284)
  - FY 2018-2019 biennial budget
  - Substantial hospital reimbursement cuts averted
  - Continued diversion of *Fund for a Healthy Maine* from statutorily designated purposes to general MaineCare budget
  - Repeals 3% income tax surcharge on high income individuals passed by referendum

# Children's Issues

- L.D. 118, An Act To Require Moped Riders Under 18 Years of Age to Wear a Helmet (P.L. 2017, Ch. 51)
- L.D. 1112, An Act Regarding the Maternal and Infant Death Review Panel (P.L. 2017, Chapter 203)
  - Amends the law to add review of fetal death, makes the Maine CDC Medical Director the “director” of the panel, provides access to PHI without family consent, and requires the panel to meet twice per year.
- L.D. 1113, An Act to Improve Antihunger Programs in Maine Schools (P.L. 2017, Chapter 238)
  - Directs DOE to make internet-based applications for the National School Lunch Program available to public schools

# Children's Issues

- L.D. 1170, An Act To Reduce Youth Access to Tobacco Products (P.L. 2017, Ch. 308)
  - Prohibits sale of tobacco products to individuals under 21 unless the individual has attained the age of 18 by July 1, 2018
- L.D. 1261, An Act to Protect Children from Sex Trafficking (P.L. 2017, Chapter 135)
  - Establishes a Class D crime for an individual who solicits a minor for prostitution
- L.D. 1335, An Act to Provide Youth Mental Health First Aid Training to Secondary School Health Educators (P.L. 2017, Chapter 269)
  - Requires a school administrative district to provide such training if it receives funding specifically for that purpose



# Firearms/Domestic Violence

- L.D. 1219, An Act To Amend the Laws Governing Forensic Examination Kits (P.L. 2017, Ch. 156)
  - Permits the kits to be used for sexual assaults other than “gross sexual assault” & directs a hospital or health care practitioner to bill the Victim’s Compensation Fund using a tracking number assigned by the manufacturer of the kit

# Health Care Information

- L.D. 183, An Act Requiring the Use of the Electronic Death Registration System (P.L. 2017, Ch. 37)
  - Effective July 1, 2018, requires individuals filing a certificate of death to use the electronic death registration system maintained by the State Registrar of Vital Statistics

# Individual Licensing/Scope

- L.D. 132, An Act To Authorize Podiatrists to Perform Certain Routine Procedures (P.L. 2017, Ch. 14)
  - Amends the scope of practice to include “performance of a history and physical on a podiatrists’ preoperative patient”
- L.D. 593, An Act To Update the License Renewal Provision of the Board of Licensure in Medicine (P.L. 2017, Ch. 63)
  - Amends the notice of impending expiration requirement from “mail” a renewal package to “notify” of the time to renew & allows renewal within 90 days after expiration by submitting the filing fee & late fee

# Individual Licensing/Scope

- L.D. 801, An Act To Allow a Physical Therapist to Administer Certain Coagulation Tests in a Person's Home (P.L. 2017, Ch. 80)
  - Permits a physical therapist to administer a finger stick blood test as part of a home visit & requires a report of results to the attending clinician for interpretation
- L.D. 985, An Act To Promote Medical Care for Visiting Athletic Teams (P.L. 2017, Ch. 119)
  - Permits a physician with an unrestricted license in another state who provides medical services to an athletic team pursuant to a written agreement, to treat a member of the team, the coaching or other staff, the cheerleading squad, the band, & the mascot when visiting in Maine

# Individual Licensing/Scope

- L.D. 1134, An Act To Amend the Laws Governing Nursing Facilities To Permit Nurse Practitioners, Clinical Nurse Specialists and Physician Assistants To Perform Certain Physician Tasks (P.L. 2017, Ch. 145)
  - Requires a physician to perform the initial comprehensive visit for a resident in a SNF, but permits a physician to delegate any other required visit or medically necessary visit to a mid-level practitioner & permits delegation of all 3 types of visits for a resident in a NF
- L.D. 1166, An Act Regarding Anesthesia Care in Rural Maine (P.L. 2017, Ch. 188)
  - Permits CRNAs in critical access hospitals and hospitals located in rural areas to conduct a preanesthetic assessment, verify informed consent, make indicated adjustments and corrections, order appropriate lab tests and diagnostic imaging tests, and prescribe certain drugs

# Individual Licensing/Scope

- L.D. 1200, An Act Relating to the Licensure of Physicians (P.L. 2017, Ch. 189)
  - Prohibits the Board of Licensure in Medicine from requiring ABMS “maintenance of certification” (MOC) as a condition of initial licensure or renewal
- L.D. 1359, An Act To Adopt the Interstate Medical Licensure Compact (P.L. 2017, Ch. 253)
  - Authorizes the 2 physician licensing boards (M.D./D.O.) to request state & national criminal history information, including fingerprint records, for physicians who request expedited licensure under the Interstate Medical Licensure Compact

# Individual Licensing/Scope

- L.D. 1410, An Act To Adopt the Nurse Licensure Compact (P.L. 2017, Ch. 258)
  - Adopts the model Interstate Nurse Licensure Compact of the National Council of State Boards of Nursing & adds a federal fingerprint background check requirement
- L.D. 1592, An Act To Remove Barriers to Professional Licensing for Veterans (P.L. 2017, Ch. 173)
  - Grants Director of the Office of Professional & Occupational Regulation within DPF to modify licensing requirements & waive licensing fees on a case-by-case basis for military veteran applicants to licensing boards under the Office

# Individual Licensing/Scope

- L.D. 1594, An Act Regarding the Dispensing of Naloxone Hydrochloride by Pharmacists (P.L. 2017, Ch. 249)
  - Authorizes pharmacists to prescribe & dispense naloxone in accordance with rules of the Board of Pharmacy; the provision sunsets on July 1, 2019
- L.D. 455, An Act Relating to the Provision of Nicotine Replacement Products by Pharmacists (P.L. 2017, Ch. 185)
  - Includes within the scope of practice of pharmacists the ordering & dispensing of OTC nicotine replacement products



# Insurance Practices

- L.D. 445, An Act To Encourage Maine Consumers To Comparison-shop for Certain Health Care Procedures and To Lower Health Care Costs (P.L. 2017, Ch. 232)
  - Beginning 1/1/19, carriers must establish a small group plan design for HAS-compatible plans that directly incentivize enrollees to shop for “comparable health care services”
  - “Comparable health care services:” non-emergency, OP services in 4 categories:
    - PT & OT
    - Radiology & imaging
    - Labs
    - Infusion therapy
  - BOI directed to study & evaluate program & report annually to the legislature beginning 3/1/20; sunset 1/1/24

# Insurance Practices

- L.D. 445 continued
  - Beginning 1/1/18, carriers must develop & make available to enrollees a website & toll-free phone number to obtain estimated costs for “comparable health care services” from network providers
  - Carriers may direct enrollees to the MHDO web site, [www.comparemaine.org](http://www.comparemaine.org)
  - Beginning 1/1/19, carriers must, upon enrollee request, apply amount paid for “comparable health care service” from an out-of-network” (ME, NH, MA) provider to the enrollee cost sharing requirement, so long as the cost is same as or less than the statewide average payment based on MHDO data; sunset 1/1/24
  - Requires provider who makes a referral for a “comparable health care service” during an in-person visit to notify patient of right to obtain the service from another provider

# Insurance Practices

- L.D. 1385, An Act Governing Direct Primary Care Service Agreements (P.L. 2017, Ch. 112)
  - Defines “direct primary care service agreement” & states that the relationship of the parties to such an agreement is not an insurance relationship
  - Ensures that a DPC fee may be paid by persons or entities other than the patient
  - Ensures that a DPC practitioner may bill separately for services not covered by the DPC service agreement
  - States that a DPC practitioner may enter into separate agreements with an insurance carrier to supplement a DPC service agreement & to develop DPC service pilot projects with state or federal agencies that provide health care coverage

# Insurance Practices

- L.D. 1557, An Act To Protect Maine Consumers from Unexpected Medical Bills (P.L. 2017, Ch. 218)
  - Provides that an enrollee who receives a “surprise bill” from an out-of-network provider must pay only the cost-sharing that would be imposed for the services if rendered by a network provider
  - Sets the reimbursement rate for the service by the out-of-network provider at the network rate unless otherwise agreed & provider may not “balance bill” the patient
  - “Surprise bill” defined narrowly
  - Requires carriers to make available provider directories

# Insurance Mandates

- L.D. 1237, An Act To Require Insurance Coverage for Contraceptive Supplies (P.L. 2017, Ch. 190)
  - Ensures coverage for contraceptive supplies without cost sharing for at least one drug, device or other product for each contraceptive method
  - If a health care provider recommends a particular contraceptive supply on the basis of medical necessity, coverage must be provided without cost sharing
  - Requires coverage for contraceptives dispensed for a 12-month period at the discretion of the health care provider

# Medicaid Policy

- L.D. 761, An Act To Increase Access to Hearing Aids (P.L. 2015, Ch. 237)
  - Codifies current practice in the rules of the DHHS
  - Specifies that one hearing aid is reimbursable under the MaineCare program and that a 2nd hearing aid is reimbursable if an individual meets the department's requirements established by rule
  - Removes the exclusion of batteries and cords and other assistive listening devices from coverage
  - Replaces the term "physician" with the term "primary care provider"

# Medicaid Policy

- L.D. 1485, An Act Regarding MaineCare Coverage for Telehealth Services (P.L. 2017, Ch. 307)
  - Establishes the Maine Telehealth & Telemonitoring Group within DHHS to
    - Evaluate technical difficulties
    - Make recommendations
  - Requires DHHS to make an annual report to the HHS Committee on & after 1/1/18
  - Directs DHHS to conduct rulemaking on aspects of MaineCare telehealth coverage, including coverage for group therapy for behavioral health & addiction services through telehealth

# Medical Ethics/Rights

- L.D. 46, An Act To Provide Consistency with Regard to Jury Duty Exemption (P.L. 2017, Ch. 275)
  - Eliminates the exemption from jury duty for physicians & dentists in active practice, among other professionals
  - Physicians still may seek an exemption on a case-by-case basis
- L.D. 911, An Act To Prohibit Certain Gifts to Health Care Practitioners (P.L. 2017, Ch. 267)
  - Prohibits a “gift” from a PhRMA/medical device manufacturer to a health care practitioner
  - "Gift" does not include samples of prescription drugs to be given to patients for free, items with a total value of less than \$50 over a calendar year, payments to sponsors of educational programs, honoraria and payments of expenses incurred at an educational conference or meeting, compensation for research, publications or educational materials and salaries or other benefits paid to employees



# Mental Health/Substance Abuse

- L.D. 1223, An Act To Facilitate the Continued Operation of the Department of Corrections Intensive Mental Health Unit (P.L. 2017, Ch. 147)
  - removes the 8/1/17 sunset in P.L. 2013, chapter 434 that enable the Department of Corrections to establish an intensive mental health unit, which provides services to the department's prisoners and to prisoners of jails, and that enable the department to obtain court orders for the involuntary medication of prisoners with mental illness

# Mental Health/Substance Abuse

- L.D. 1231, Resolve, To Assess the Need for Mental Health Care Services for Veterans in Maine and To Establish a Pilot Program To Provide Case Management Services to Veterans for Mental Health Care (Resolves 2017, Ch. 24)
  - Establishes a program for the collection of data by hospitals regarding veterans presenting to ERs for behavioral health care
  - Data must be analyzed by DHHS in coordination with the Director of the Maine Bureau of Veterans' Services to quantify the unmet need for mental health care services, particularly inpatient treatment, among veterans and to identify gaps in mental health services at the VA
  - Establishes a 2-year pilot program to provide contracted case management services to veterans in need of mental health care services
  - Provides funding to mitigate the costs to hospitals for collecting and reporting data and to pay for the contracted case management services program

# Mental Health/Substance Abuse: The Opioid Abuse Crisis

- Joint Order, Establishing the Task Force to Address the Opioid Crisis in the State (S.P. 210)
  - Members include MMA EVP Gordon Smith, Sen. Geoffrey Gratwick, M.D., Steve Diaz, M.D., & Vernon “Trip” Gardner, M.D.
  - Web page: <http://www.maine.gov/legis/opla/OpioidTaskForce.htm>

# Mental Health/Substance Abuse: The Opioid Abuse Crisis

- L.D. 1031, An Act To Clarify the Opioid Medication Prescribing Limits Laws (P.L. 2017, Ch. 213)
  - Amends aspects of P.L. 2015, Ch. 488
    - Amends definition of “palliative care” to clarify that it does not require a terminal illness & includes chronic, unremitting, or intractable pain
    - Amends definition of “dispenser” to remove health care practitioners
    - Eliminates ER’s obligation to report controlled substance dispensed by the ER for period of 48 hours or less
    - Permits group practice leader to designate list of individuals authorized to access the PMP
    - Removes requirement that dispenser notify PMP in cases where fraud or duplication is involved, but requires dispenser to contact prescriber
    - Clarifies that PMP check is not required for either IP or OP surgical procedures
    - Clarifies that dispensing in conjunction with surgical procedures is exempt from the 100 MME limit

# Mental Health/Substance Abuse: The Opioid Abuse Crisis

- L.D. 1363, Resolve, Regarding Legislative Review of Portions of Chapter 11: Rules Governing the Controlled Substances Prescription Monitoring Program and Prescription of Opioid Medications, a Late-filed Major Substantive Rule of the Department of Health and Human Services (Resolves 2017, Ch. 16)
  - Finally adopted rule recently posted:  
[file:///C:/Users/amaclean.MMA/AppData/Local/Packages/Microsoft.MicrosoftEdge\\_8wekyb3d8bbwe/TempState/Downloads/FINAL%2014-118%20C.M.R.%20Chapter%2011%20Rules%20Governing%20the%20pmp.pdf](file:///C:/Users/amaclean.MMA/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/FINAL%2014-118%20C.M.R.%20Chapter%2011%20Rules%20Governing%20the%20pmp.pdf)

# Mental Health/Substance Abuse: The Opioid Abuse Crisis

- L.D. 273, An Act To Add an Exception to Prescription Monitoring Program Requirements (P.L. 2017, Ch. 122)
  - Amends the exceptions to the requirement in P.L. 2015, Ch. 488 to check the PMP to include the following:
    - Directly orders or administers an opioid or benzodiazepine medication in the ER, an IP hospital, a LTC facility, or a residential care facility
    - Directly orders, prescribes or administers an opioid or benzodiazepine medication to an individual suffering from pain associated with end-of-life or hospice care

# Mental Health/Substance Abuse: The Opioid Abuse Crisis

- L.D. 184, An Act To Allow Hospitals To More Efficiently Monitor the Prescribing of Controlled Substances by Amending the Laws Governing Access to Prescription Monitoring Information (P.L. 2017, Ch. 87)
  - Permits PMP access by the CMO, Medical Director, or other administrative prescriber of a hospital for the prescribing information of prescribers employed by the hospital

# Mental Health/Substance Abuse: The Opioid Abuse Crisis

- L.D. 479, An Act To Inform Patients of the Dangers of Addicting Opioids (P.L. 2017, Ch. 186)
  - Requires health care entities employing prescribers of opioid medications to develop an opioid prescribing policy that includes risk assessment, informed consent, and counseling on the risk of opioid use by 1/1/18



# Public Health

- L.D. 1108, An Act To Restore Public Health Nursing Services (P.L. 2017, Ch. 312)
  - Requires DHHS to fill all public health nursing positions in the DHHS Public Health Nursing Program for which funding is provided
- L.D. 1427, An Act To Make Community Paramedicine Services Permanent (P.L. 2017, Ch. 276)
  - Gives Maine EMS the authority to continue “community paramedicine” in accordance with rules to be developed by the board

# Medical Marijuana

- L.D. 764, An Act To Limit the Exclusion of a Patient from Eligibility for an Organ Transplant Based on Medical Marijuana Use (P.L. 2017, Ch. 252)
  - Requires a transplant evaluator to treat the use of medical marijuana in a form not smoked by a potential recipient of an anatomical gift as equivalent to any other prescribed drug

# Health Care Reform

- Joint Study Order, to Establish the Task Force on Health Care Coverage for All of Maine (S.P. 592)
  - Interim study on health care reform for Maine based on no prescribed model (not single payer)
  - Depends on private fundraising efforts of principal legislator advocates

# Second Regular Session

- Bills carried over from First Regular Session
- New bills admitted through Legislative Council review this Fall
- Legislators will return the first Wednesday after the New Year in 2018 & should conclude second session by mid-April

# Key Bills Carried Over

- MLI: 164 (tamper proof products); 855 (protect children from edible cannabis products); 1431 (tax revenue to OUD treatment); 1448 (deter minors' use)
- LCRED: 503 (Doctors for Maine's Future Program); 912 (conversion therapy); 1327 (former military medical personnel); 1587 (Paid FMLA)
- HHS: 565, 605, 812, 1063, 1429, 1430 (OUD treatment); 898 (mandatory OT in hospitals); 958 (UEVHPA); 1189 (minors' consent to drug/alcohol treatment); 1273 (re-dispense drugs); 1517 (ensure access to BH treatment)

# Key Bills Carried Over

- IFS: 1030 (non-discrimination against NDs); 1032 (PA & UR standards/MMA bill); 1279 (ensure patient protections); 1407 (step therapy); 1417 (Lyme disease); 1476 (continue EHB)
- JUD: 1267 (protect medical professional licensing info.); 1406 (drug price transparency)
- TAX: 1287 (recruiting incentives for medical professionals)
- CJPS: 1388 (falsification of medical records)
- VLA: 1309 (tobacco bars)

# Federal Issues

- ACA: Amend? Repeal & replace?

# Questions?

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